

UNITED STATES OF AMERICA
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

**National Association of Utility
Consumer Advocates' Petition
For Declaratory Ruling Regarding
Truth-In-Billing and Billing Format**

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CG Docket No. 04-208

**COMMENTS OF THE TENNESSEE
EMERGENCY COMMUNICATIONS BOARD**

The Tennessee Emergency Communications Board ("TECB") respectfully submits its initial comments on the *Petition for Declaratory Ruling* filed by the National Association of State Utility Consumer Advocates ("NASUCA") on March 30, 2004.¹ The Federal Communications Commission ("Commission" or "FCC") issued a Public Notice permitting comment thereon on May 25, 2004.

NASUCA seeks a ruling prohibiting both wireline and wireless carriers from imposing monthly line-item charges, surcharges and fees on customers' bills unless such charges have been expressly mandated by a regulatory agency. NASUCA maintains that these self-imposed line-item charges are misleading and deceptive in their application, bear no demonstrable relationship to the regulatory costs they purport to recovery and, as such, constitute an unreasonable and unjust practice in violation of the FCC's "Truth-In-Billing Order.

¹ NASUCA is an association of 44 consumer advocates in 42 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

² See *In the Matter of Truth-In-Billing and Billing Format*, CC Docket No. 98-170 (First Report and Order and Further Notice of Proposed Rulemaking) 14 FCCR 7492 (1999) ("TIB Order").

The TECB does not necessarily support an outright prohibition on all self-imposed “regulatory fees” carriers unilaterally assess on their subscribers. Some states, unlike Tennessee, provide little or no cost recovery to carriers seeking to comply with FCC mandates on Phase I and Phase II Enhanced 911 deployment. Carriers should be entitled to recover these costs. Nevertheless, carriers must be prohibited from concealing what are actually increases in their rates by labeling such increases as regulatory fees. Further, and even more importantly, carriers must be barred from using states that provide reimbursement for expenditures to implement, operate, maintain or enhance wireless enhanced 911 service as profit centers by seeking cost recovery for expenditures already covered by their self-imposed regulatory fees.

Background

In Tennessee, the TECB administers a program that fully and completely reimburses CMRS providers³ (“wireless carriers”) for all expenditures used “to implement, operate, maintain, or enhance statewide wireless enhanced 911 service” in the state.⁴ This statewide approach to implementation and cost-recovery is recognized as a model by the telecommunications industry, national public safety organizations, the Federal Communications Commission (“FCC”) and the U.S. Congress.⁵

³ Tenn. Code Ann. § 7-86-103(4) defines a CMRS provider as “any person, corporation, or entity licensed by the federal communications commission to offer commercial mobile radio service in the state of Tennessee, and includes, but is not limited to, broadband personal communications service, cellular radio telephone service, geographic area specialized mobile radio services in the 800 MHz and 900 MHz bands that offer real-time, two-way voice service that is interconnected with the public switched network, incumbent wide area SMR licensees, or any other cellular or wireless telecommunications service to any service user; . . .”

⁴ Tenn. Code Ann. §§ 7-86-303(d)(2); 7-86-306(a)(10).

⁵ For example, during a congressional hearing on E-911 implementation on June 4, 2003, Rep. Bart Gordon stated, “Tennessee continues to be recognized as a national leader in E-911 deployment. . . .” In an April 20 article in *The Tennessean*, David Aylward, Director of ComCare Alliance, stated, “The national implementation of Phase II E-911 is going extremely slow . . . there have been lots of reasons, but it hasn’t stopped Tennessee, which, if not the national leader, is one of a handful of states who are leading the way.” During an E-911 Roundtable held at the Federal Communications Commission on October 29, 2003, Karl Korsmo of AT&T Wireless stated, “Tennessee is a great example of leadership.”

The TECB's cost recovery program is funded by a flat, statewide emergency telephone service charge of \$1.00 per month imposed on the users and subscribers of wireless telephone service.⁶ From this fund, the TECB is also required to provide support, reimbursement and grants to the local emergency communications districts that provide emergency communications service.⁷

As a condition for such reimbursement, the TECB adopted a policy prohibiting wireless carriers from "double dipping," *i.e.*, profiting from the Board's cost recovery program by requesting reimbursement for costs they were already recovering or would recover through self-imposed charges identified on their bills as "regulatory" fees, which are not required or approved by any governmental regulatory agency. As this policy makes clear, the Board is willing to make carriers whole by providing full reimbursement for E-911 related expenditures, but it will not function as a profit center for carriers to make them more than whole.

The Board's policy is designed to prevent carriers from diverting to their coffers 911 funds needed to support the state's local emergency communications districts, which, particularly in rural Tennessee, are struggling to fund basic operations. Carriers that successfully circumvent the Board's policy by obtaining reimbursement from the Board and through their self-imposed "Regulatory Programs Fees" profit by depleting the Board's grant programs which help fund dispatcher salaries in the most rural districts and provide funding for the purchase and maintenance of GIS Mapping Systems, the technology that locates 911 callers who are unable to speak or otherwise cannot provide a location to emergency responders. While it is the Board's policy to prohibit such

⁶ See Tenn. Code Ann. § 7-86-108(a)(1)(B)(i).

⁷ See Tenn. Code Ann. § 7-86-302(d).

“double dipping,” no law currently bars carriers in Tennessee from receiving greater than full recovery of their E-911 related expenditures by seeking reimbursement through state law mandated emergency telephone service charges when they have already been or will be made whole for those same expenditures through their own self-imposed “Regulatory Programs Fees,” which are, on occasion, misleadingly placed on customers’ bills under the same heading as the state mandated 911 fee (for example, both will be presented as “Taxes, Surcharges and Regulatory Fees”).⁸

Argument

The FCC’s leadership is needed to eliminate deceptive billing practices committed by carriers that conceal their rate increases in self-imposed “regulatory” fees assessed against customers in states who are already fully funding E-911 cost recovery through state-mandated charges. The TECB is not opposed to carriers, especially Tier 2 and 3 wireless carriers, obtaining full cost recovery for expenditures to implement, operate, maintain and enhance E-911 operations. In states that provide no support for carriers’ efforts to comply with the FCC’s E-911 regulations, carriers should not be prohibited from recovering such expenditures from their customers.

It is requested, however, that the FCC assure that such recovery is obtained by truthful means, instead of hidden in “regulatory program fees” that are, in actuality, rates. A truly competitive environment cannot exist when customers are not fully and truthfully informed about the rates competitors are charging. It is further requested that the Commission prohibit carriers from profiting from state-run cost recovery programs by obtaining reimbursement for costs they are already recovering or will recover through

⁸ See *In the Matter of Truth-In-Billing Format, National Association of State Utility Consumer Advocates Petition for a Declaratory Ruling Regarding Monthly Line Items and Surcharges Imposed by Telecommunications Carriers*, FCC No. 04-208 (Petition for Declaratory Relief) p. 18 (filed March 30, 2004).

their self-imposed "Regulatory Programs Fees" which are not required or approved by any governmental regulatory agency.

Conclusion

For the foregoing reasons, the Tennessee Emergency Communications Board requests that the Commission prohibit carriers from concealing what are actually increases in their rates by labeling such increases as regulatory fees. Further, and even more importantly, the Commission is urged to bar carriers from using states that provide reimbursement for expenditures to implement, operate, maintain or enhance wireless enhanced 911 service as profit centers by seeking cost recovery for expenditures already covered by their self-imposed regulatory fees. It is requested that any ruling on this matter by the Commission explicitly assert that states will not be preempted from establishing more stringent standards for consumer protection.

Respectfully submitted,



Anthony Haynes
Executive Director

Tennessee Emergency Communications Board
500 James Robertson Parkway
Nashville, Tennessee 37243
(615) 253-2164
Anthony.Haynes@state.tn.us
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